

on the checklist, including unbundled switching.¹⁵ Moreover, because the many CLECs that are not interexchange carriers have no incentive to delay entry, there is also no way that interexchange carriers could themselves delay RBOC entry by failing to take the available steps to offer competitively significant local services of their own. In short, there is no likelihood that interexchange carriers or other CLECs will delay their own entry once the necessary conditions are in place. It is thus sheer conjecture to assert that BOCs are dependent upon the business plans of its future rivals.

Third, these RBOC concerns rest on the false legal premise that RBOCs would not have fully adequate legal remedies if checklist items were not used. If a BOC, having first truly made available all checklist items,¹⁶ were ever able to show that interexchange carriers had refused to use a particular checklist item in order to bar the BOC from obtaining Section 271(c)(1)(A)

¹⁵ Indeed, the BellSouth/SBC contention (Comments at 5) that CLECs have "fail[ed] to order switching" from Ameritech is patently false. For several months, AT&T has aggressively sought to obtain unbundled switching from Ameritech through provision of the UNE-platform. See Bryant Aff. ¶¶ 33-57; Falcone/Gerson Aff. ¶¶ 15-19. Yet Ameritech refused even to discuss provision of the platform until April of this year, has not provided AT&T with the information needed to order the platform, and has yet to develop the capability in its own network, switches, and OSS to provision the platform. Id. ¶¶ 20-21, 30-33; see DOJ Evaluation at 21 & n.31. Ameritech's inability to claim that it is furnishing unbundled switching to CLECs is thus a problem entirely of its own making.

¹⁶ As both the Georgia and Wisconsin state commissions have concluded, a BOC that is not capable of actually furnishing a particular checklist item in a timely and nondiscriminatory manner upon request cannot be found to be "generally offering" that item as required under the statute. See In re BellSouth Telecommunications Inc. Statement of Generally Available Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996, Docket No. 7253-U, at 8 (Ga PSC Mar. 20, 1997); Wisconsin Utility Reg. Rep., at 3-5 (Apr. 3, 1997). Thus, the critical difference between Track A and Track B is that, under Track A, the BOC must actually be providing each of the elements in a timely and nondiscriminatory fashion, whereas under Track B the BOC is excused from having actually to provide an element that has not yet been requested, but must nevertheless prove that it could do so if asked.

relief, then its remedy would be to invoke the exceptions to Track A which trigger Track B. See SBC Order ¶ 37.¹⁷

Finally, the RBOCs' conflation of provide and offer would disrupt the careful balance of incentives against "gaming" that Section 271 contains. See id. ¶ 46. The RBOC approach would preserve the protection that Track B gives BOCs against CLECs' not following through on their agreements, but eliminate the protection that Track A gives CLECs against BOCs not following through on their checklist obligations. Given the BOCs' obvious incentives to prevent effective exchange competition and Ameritech's conduct to date, there is no reason to remove the protection of the "providing" requirement from Track A.

B. The Commission Should Strictly Enforce The Statutory Requirement That The Competitive Checklist Be "Fully Implemented"

Contending that "isolated implementation issues cannot be used to undermine checklist compliance," BellSouth and SBC urge the Commission not to devote its resources to addressing the "implementation glitch[es]" and "growing pains" that will inevitably accompany CLEC entry. Id. at 8, 9. On the contrary, it is precisely an "explicit factual determination" of full implementation that the Commission must make. H.R. Rep. No. 104-458, at 148 (1996). This is true not only because the plain terms of the statute demand it -- see § 271(d)(3)(A)(i) -- but

¹⁷ The fact that interconnection agreements today generally do not have implementation schedules reflects the RBOCs' inability to predict when they will implement the OSS interfaces and other requirements of Section 251 that must be in place before CLECs can place significant volumes of orders. Notably, the staff of the Illinois Commerce Commission has taken the position that, once it is possible to establish meaningful schedules, they may be implied by law into existing interconnection agreements and enforced. See Supplemental Initial Brief of the Staff of the Illinois Commerce Commission, Investigation Concerning Illinois Bell Telephone Company's Compliance With Section 271(c) of the Telecommunications Act of 1996, Docket No. 96-0404, at 11-12 (Ill. Comm. Comm'n May 21, 1997).

because if interLATA relief were granted before this Commission were satisfied that the checklist was fully implemented, then the RBOCs would have virtually unlimited opportunities to delay checklist compliance and meaningful competitive entry.

In this regard, AT&T's experience with Ameritech is particularly instructive. From simple non-cooperation and foot-dragging to outright defiance of clear state and federal obligations, Ameritech has repeatedly demonstrated the ability to delay competition and preserve its local monopoly. There are multiple reasons why an RBOC's promise to provide a checklist item is no guarantee that the RBOC will ever actually provide the item in a nondiscriminatory manner.

1. **Technical Complexity:** Many of the checklist items have never been provided by ILECs before. While no one doubts that providing these items is technically feasible, in many cases the interconnection, electronic interface, and billing arrangements and switching modifications needed to support the provisioning of these items have yet to be developed and deployed. AT&T's experience with Ameritech makes it obvious that such arrangements cannot be put into place overnight or without incident. In attempting to implement nondiscriminatory access to Ameritech's OSS to support resale entry, for example, AT&T's efforts over the past nine months have uncovered a host of technical problems that neither company foresaw, and that in some cases have required months of negotiation, development, and further testing to resolve. See, e.g., Bryant Aff. ¶¶ 157-63 (Caller ID with name); id. ¶¶ 164-67 (RSID on CSR); id. ¶¶ 168-74 (PIC/LPIC/2PIC); id. ¶¶ 179-86 (wholesale billing); Connolly Aff. ¶ 45 (supplementing orders). As for the platform, it was not until implementation discussions began (in May 1997) that AT&T learned of Ameritech's insistence that AT&T include, in its EDI

platform orders, line class codes that needlessly duplicate the information concerning the customer's desired feature package that USOCs already convey. See Bryant Aff. ¶¶ 53-55. Similarly, it was not until these same discussions that AT&T learned that Ameritech -- despite allegedly spending millions to upgrade its switches for the unbundled environment -- had not done the software development necessary to enable it to provide CLECs with the data necessary to bill for access services. Id. ¶ 56; Falcone/Gerson Aff. ¶¶ 32-33; Falcone/Sherry Aff. ¶¶ 78-81, 88.

In other instances, assertions of technical complexity provide convenient cover for non-cooperation. For example, months of delay was added to the development of electronic access to OSS by Ameritech's decisions not to send knowledgeable individuals to OSS meetings with AT&T, leading AT&T to send Ameritech lists of written questions in advance of meetings in an effort to ensure that some progress could be made. See Bryant Aff. ¶¶ 23-28 & Att. 3.

None of the technical issues surrounding local entry is insurmountable. But real solutions -- ones that deliver the item to CLECs on nondiscriminatory terms -- demand diligent cooperation from the RBOCs. That will come, if ever, only so long as the incentive provided by strict enforcement of Section 271 remains in place.

2. **Changes Of Position**: A second problem is the willingness of BOCs to change position as the process of implementation unfolds, and their ability to do so without fear of significant penalty. Until an RBOC and a CLEC work through all of the steps needed to put a provisioning process in place and have it function in a stable and reliable manner, CLECs have no basis for confidence that the RBOCs will remain committed tomorrow to what they have promised to provide today.

For example, for months Ameritech first negotiated and then appeared committed to a set of performance standards for structure access, only to abandon those commitments in writing two days before filing the instant application. Lester Aff. ¶¶ 8, 23-28. Similarly, despite a clear order from the MPSC to provide RI-PH through the BFR process, Ameritech has now announced its unilateral refusal to pursue that process with AT&T. Evans Aff. ¶¶ 57-58 & Att. 9. And with respect to customized routing for OS/DA, Ameritech has exploited the BFR process to introduce surprise charges and needless delay that has effectively rendered the process useless as a means of obtaining a key functionality of the unbundled switch. Falcone/Sherry Aff. ¶¶ 118-25.

3. Defiance Through Litigation Delay: CLECs also cannot count on an RBOC to live up to its obligations merely because state or federal law imposes them or even because the State Commission has expressly ordered compliance. The MPSC has been unable to compel Ameritech to comply with its longstanding and crystal-clear obligation to open the intraLATA toll market in Michigan to competition (see Puljung Aff. ¶¶ 27-29 & Att. 1), and has acknowledged that Ameritech has chosen to ignore the MPSC's clear order to provide unbundled shared transport while its arguments for reconsideration remain pending before this Commission. MPSC Comments at 39. Ameritech is, of course, free to choose to "exhaust[]" its "legal remedies" (id. at 40), but -- absent a stay -- it may not disregard those obligations while its challenges are pending, and if it does so then it cannot in the meantime be found to have complied with Section 271.

4. Exploitation of Assertedly Vague Language: Finally, AT&T's experience with Ameritech shows that, until agreements are fully implemented, the room for dispute about what

particular terms mean is limited only by an RBOC's imagination. This is most obviously true of "shared transport," on which Ameritech and AT&T seemingly had a clear and repeatedly confirmed meeting-of-the-minds throughout negotiations and arbitration, but which Ameritech later redefined in an attempt to defeat AT&T's effort to order the platform. See Falcone/Sherry Aff. ¶¶ 20-34 and Exhibit A thereto. But it is also true, for example, of terms such as "missed due date," a crucial indicator of whether CLECs are receiving nondiscriminatory access, which Ameritech has nevertheless chosen to define in a unique way that "obviously masks the very capacity problems" that the indicator should serve to reveal. See DOJ Evaluation App. A at A-13 to A-14.

There is no doubt that Ameritech would assert with respect to every one of these examples that it has acted in the utmost good faith. Perhaps in at least some instances it has. But the inherent difficulty of assessing good faith in these circumstances means that -- absent the incentive of interLATA relief and the requirement of full implementation -- Ameritech has virtually unlimited freedom to exploit the gray area of noncooperation and thereby delay meaningful competitive entry significantly if not indefinitely.

That basic fact demonstrates both the wisdom of Congress's decision to preclude interLATA authorization unless and until the BOC is actually providing CLECs with each checklist item on nondiscriminatory terms and conditions, and the need for this Commission to leave the BOCs with no doubt about its intent strictly to enforce that requirement. If BOCs are granted long distance authority before they have provided CLECs the ability to provide reliable, high-quality service to as many local customers as they can attract, then CLECs are unlikely ever to get the cooperation from the BOC needed to achieve that ability, and will thus be unable

to match the BOCs' ubiquitous offer of combined local and long distance service. For this reason, the Act's fundamental goal of opening all telecommunications markets to full and fair competition depends upon strict enforcement of the requirements of Track A.

CONCLUSION

For these reasons and those stated in AT&T's initial Comments, the application of Ameritech Michigan for interLATA authorization should be denied.

Respectfully Submitted,



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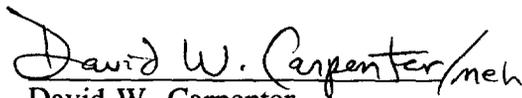


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Certificate of Service

I, Thomas D. Lane, do hereby certify that on this 7th day of July, 1997, copies of the foregoing Reply Comments of AT&T Corp. were served, unless otherwise denoted, by U.S. mail, postage prepaid, upon the parties listed on the attached service list.



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